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ARIZONA CORPORATION COMMISSION

May 20, 2003

Chairman Marc Spitzer
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Re: The Phone Company Management Group, LLC, et al.
Docket Nos. T-03889A-02-0796 and T-04125A-02-0796

Dear Chairman Spitzer:

Pursuant to your request, I am responding to your May 9, 2003 letter. I have been following the Livewirenet dockets with interest. You are correct to note that Mr. Wetherald's April 29 letter raises several procedural concerns.

The Phone Company Management Group, LLC and its associated Respondents (collectively "PCMG") have declined to produce documents subject to discovery. What consequences attach to PCMG's unilateral declaration? Are parties to Commission proceedings free to ignore Commission orders?

Of course parties are not free to ignore Commission Orders. Failure to obey Commission Orders carries consequences. Unfortunately, PCMG has refused to follow Commission Orders including the directives to send notice of possible discontinued service to its customers and to submit documents to the Commission. PCMG's attorney has told us that he will no longer appear before this body.

The Arizona Constitution, state law, Commission rule and the Rules of Civil Procedure spell out the Commission's powers to compel compliance with our Orders. The Commission shall have "full power" to make reasonable rules, regulations and orders for the convenience, comfort and safety of a utility's customers. (AZ Const. Art. XV § 3). The Commission has the authority to enforce its rules, regulations and orders by the imposition of a fine (AZ Const. Art. XV § 19). ARS § 40-246(A) holds the Commission, on its own motion, may make a complaint regarding *any* act or omission by a public service corporation (emphasis added). Commission rule holds that the Commission may impose penalties as provided by law against any person for contemptuous conduct (R14-3-104(F)(4)). The rules shall be liberally construed (R14-3-101(B)). Finally, if the Arizona Constitution, state law and commission rule fail to establish a procedure, the Arizona Rules of Civil Procedure apply (R14-3-101(A)). Rules 16(f) and 37(b) authorize a court to impose sanctions for failing to obey an order and the party may be found in contempt.

There is an important public policy behind the rules that require a regulated entity to comply with Commission Orders even after it has voluntarily surrendered its CC&N. Mr. Wetherald's contention that PCMG no longer is subject to Commission jurisdiction results in the absurd conclusion that a utility can release itself from regulatory obligations at its own discretion. Mr. Wetherald's arguments

would result in a dysfunctional regulatory environment that is inconsistent with the Commission's constitutional duties. Such a practice would leave the utility's customers in peril – not just from a regulatory perspective but also from a public safety point of view. From a public policy perspective, the Commission must – and does – retain jurisdiction over the utility to ensure its customers have the opportunity to seek alternative service or other appropriate remedy.

If a utility still wishes to assert the claim that the Commission lacks jurisdiction over it, it has other remedies available to it than to simply not show up. A party could assert this claim before the Commission in the docket at issue. It could also appeal a Commission Order citing lack of Commission jurisdiction to the superior court pursuant to ARS §40-254. Taking one's marbles and leaving the playground does not resolve the matter. In fact, PCMG's legal maneuvering and disobedience of Commission orders have caused significant delay.

PCMG appeared before the Commission through counsel. Arizona law and Commission rules require entities to be represented by counsel and provide for the withdrawal of such counsel. The Commission has not granted a motion to withdraw. Is PCMG (and its counsel) free to ignore the Commission rules and orders with regard to appearance through counsel before the Commission?

Once an attorney has appeared before the Commission on behalf of a client, that attorney cannot simply quit. The attorney must file a Motion to Withdraw. No attorney shall withdraw as attorney of record except by formal written order of the court (See Rule 5.1(a)(2)).

Since Mr. Glaser has engaged in the practice of law before the Commission, he is subject to the disciplinary jurisdiction of the Arizona State Bar. (See Rules of Professional Conduct Rule 46). If Mr. Glaser fails to obey ALJ Dion's May 15 Procedural Order compelling him to appear at the June 5 pre-hearing, it would be appropriate for this Commission to refer his conduct to the state bar.

I agree with you that PCMG and its attorney appear to be engaged in a pattern of delay and misconduct. In the interest of the public safety of PCMG's customers, I believe it is in the public interest to resolve this matter without further delay. If ALJ Dion finds sufficient evidence of fraud or other misconduct, the Commission must refer the matter to the United States Attorney's Office, the Arizona Attorney General and/or the Commission's Securities Division for further investigation. If Mr. Glaser fails to appear on June 5, the Commission should notify both the Colorado and Arizona State Bars of his conduct.

Sincerely,



Mike Gleason
Commissioner

c: Commissioner Jim Irvin
Commissioner Bill Mundell
Commissioner Jeff Hatch-Miller
Docket Control